''production'' of ''goods'' for ''commerce''. What employees are so engaged can be determined only by references to the very comprehensive definitions which Congress has supplied to make clear what is meant by ''production'', by ''goods,'' and by ''commerce'' as those words are used in sections 6 and 7. In the light of these definitions, there are three interrelated elements of coverage to be considered in determining whether an employee is engaged in the production of goods for commerce: (a) There must be ''production''; (b) such production must be of ''goods''; (c) such production of goods must be ''for commerce''; all within the meaning of the Act.[51] The three elements of ''production'' coverage are discussed in order in the sections following.

§ 776.15 "Production."

(a) *The statutory provisions.* The activities constituting ''production'' within the meaning of the phrase ''engaged in * * * production of goods for commerce'' are defined in the Act[52] as follows:

> *Produced* means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.

The Act bars from interstate commerce ''any'' goods in the production of which ''any'' employee was employed in violation of the minimum-wage or overtime-pay provisions,[53] and provides that in determining, for purposes of this provision, whether an employee was employed in the production of such goods:

> * * * proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.[54]

(b) *General scope of ''production'' coverage.* The statutory provisions quoted in paragraph (a) of this section, show that for purposes of the Act, wherever goods are being produced for interstate or foreign commerce, the employees who are covered as ''engaged in the production'' of such goods, include, in general, all those whose work may fairly be said to be a part of their employer's production of such goods,[55] and include those whose work is closely related and directly essential thereto,[56] whether employed by the same or a different employee. (See §§ 776.17 to 776.19.) Typically, but not exclusively, this includes that large group of employees engaged in mines, oil fields, quarries,

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[51] These elements need not be considered if the employee would be covered in any event because engaged ''in commerce'' under the principles discussed in preceding sections of this part.

[52] Act, section 3(j). This definition is also applicable in determining coverage of the child labor provisions of the Act. See part 4 of this title.

[53] Act, section 15(a)(1). The only exceptions are stated in the section itself, which provides that ''it shall be unlawful for any person—(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 or section 7, or in violation of any regulation or order of the Administrator issued under section 14; except that no provision of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this Act shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of the Act, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful;''

[54] Act, sec. 15(b).

[55] *Borden Co.* v. *Borella*, 325 U.S. 679; *Armour & Co.* v. *Wantock*, 323 U.S. 126. See also paragraph (c) of this section.

[56] *Kirschbaum* v. *Walling*, 316 U.S. 517; *Roland Electrical Co.* v. *Walling*, 326 U.S. 657; H. Mgrs. St., 1949, p. 14; Sen. St. 1949 Cong. Rec. p. 15372.

and manufacturing, processing, or distributing plants where goods are produced for commerce. The employees covered as engaged in ''production'' are not limited, however, to those engaged in actual physical work on the product itself or to those in the factories, mines, warehouses, or other place of employment where goods intended for commerce are being produced. If the requisite relationship to production of such goods is present, an employee is covered, regardless of whether his work brings him into actual contact with such goods or into the establishments where they are produced, and even though his employer may be someone other than the producer of the goods for commerce.[57] As explained more fully in the sections following, the Act's ''production'' coverage embraces many employees who serve productive enterprises in capacities which do not involve working directly on goods produced but which are nevertheless closely related and directly essential to successful operations in producing goods for interstate or foreign commerce. And as a general rule, in conformity with the provisions of the Act quoted in paragraph (a) of this section, an employee will be considered to be within the general coverage of the wage and hours provisions if he is working in a place of employment where goods sold or shipped in interstate commerce or foreign commerce are being produced, unless the employer maintains the burden of establishing that the employee's functions are so definitely segregated from such production that they should not be regarded as closely related and directly essential thereto.[58]

§ 776.16 Employment in "producing, * * * or in any other manner working on" goods.

(a) *Coverage in general.* Employees employed in ''producing, manufacturing, mining, handling, or in any other manner working on'' goods (as defined in the Act, including parts or ingredients thereof) for interstate or foreign commerce are considered actually engaged in the ''production'' of such goods, within the meaning of the Act. Such employees have been within the general coverage of the wage and hours provisions since enactment of the Act in 1938, and remain so under the Fair Labor Standards Amendments of 1949.[59]

(b) *Activities constituting actual ''production'' under statutory definition.* It will be noted that the actual productive work described in this portion of the definition of ''produced'' includes not only the work involved in making the products of mining, manufacturing, or processing operations, but also includes ''handling, transporting, or in any other manner working on'' goods. This is so, regardless of whether the goods are to be further processed or are so-called ''finished goods.'' The Supreme Court has stated that this language of the definition brings within the scope of the term ''production,'' as used in the Act, ''every step in putting the subject to commerce in a state to enter commerce,'' including ''all steps, whether manufacture or not, which lead to readiness for putting goods into the stream of commerce,'' and ''every kind of incidental operation preparatory to putting goods into the stream of commerce.''[60]

However, where employees of a common carrier, by handling or working on goods, accomplish the interstate transit or movement in commerce itself, such handling or working on the goods is not ''production.'' The employees in

[57] *Borden Co.* v. *Borella,* 325 U.S. 679; *Roland Electrical Co.* v. *Walling.* 326 U.S. 657; *Kirschbaum* v. *Walling,* 316 U.S. 517; *Walton* v. *Southern Package Corp. 320 U.S. 540.*

[58] *Guess* v. *Montague,* 140 F. 2d 500 (C.A. 4). *Cf. Armour & Co.* v. *Wantock,* 323 U.S. 126.

[59] H. Mgrs. St., 1949, p. 14; Sen. St., 1949 Cong. Rec., p. 15372.

[60] *Western Union Tel. Co.* v. *Lenroot,* 323 U.S. 490. See, to the same effect, *Walling* v. *Friend,* 156 F. 2d 429 (C.A. 8); *Walling* v. *Commet Carriers,* 151 F. 2d 107 (C.A. 2); *Phillips* v. *Star Overall Dry Cleaning Laundry Co.,* 149 F. 2d 416 (C.A. 2); certiorari denied 327 U.S. 780; *Walling* v. *Griffin Cartage Co.,* 62 F. Supp. 396, affirmed in 153 F. 2d 587 (C.A. 6). For examples, see paragraphs (c) and (d) of this section. Employees who are not engaged in the actual production Activities described in section 3(j) of the Act are not engaged in ''production'' unless their work is ''closely related'' and ''directly essential'' to such production. See §§ 776.17–776.19.